

REMARKS

A. Status of the Claims

Claims 1, 4, 6-12, 15, 23, 29-35, 37, and 39 were rejected in the Final Office Action dated December 31, 2009. Claims 11, 12, and 16 are cancelled. Claims 1, 6-10, 15, 19, and 29 are amended. Support for the amendments can be found in the specification at page 3, last paragraph to page 4, first paragraph, and in FIG. 1. No new matter has been added.

B. Examiner Interview

An interview with Examiner Michael Wilson and Supervisory Patent Examiner Peter Paras was conducted with Applicant's representative on March 16, 2010, which the Applicant and its representative sincerely appreciate. During the interview, there was a discussion about the species election. Applicant's representative referred to SEQ ID NO:5, however, the Response to the Restriction Requirement states the election is the "11.5 kb" region, and the Response to the June 19, 2009 Office Action sets forth arguments regarding the region from 49485-61006. Also, it appears from the Final Office action that a search was conducted based on three fragments of the 11.5 kb fragment described as 49485-61006 of SEQ ID NO:1. As discussed in further detail below, Applicants have amended the claim consistent with this election.

Also, the "11.5 kb-GFP construct" was discussed, including how this construct referred to an 11.5 kb region upstream of a GFP-encoding sequence, which is why the 11.5 kb-GFP construct would be expected to be longer than 11.5 kb.

In the telephone conference, the Examiner indicated that based on his understanding of the constructs, he believed the rejection was overcome.

Again, Applicant and its representative would like to reiterate their gratitude for the time and effort of the Examiner and his Supervisor in clarifying issues.

C. Rejoinder

According to MPEP 821.04, when an elected invention is in condition for allowance rejoinder is possible to include nonelected inventions. It is believed that the 11.5 kb fragment was searched based on nucleotides 49485-61006 of SEQ ID NO:1. The Action indicates that the art made of record includes the following:

Krystal (U.S. Patent 6,218,162), SEQ ID NO:1, starting at nucleotide 800 and sets forth nucleotides 55668-55810 of SEQ ID NO:1; and,

Lucas (*Blood*, 93(6):1922-1933, 1999) teaches nucleotides 55668-55810 of SEQ ID NO:1.

As is shown below, all of the claimed constructs share the sequence identified in independent claims 1, 15, and 19 (shown in bold).

Constructs

49485 – 61006 (11.5 kb)
49485 – 57111 (7.6 kb)
49485 – 55810 (6.3 kb)
54807 – 57110, 57945 – 61006 (6.2 kb)
51389 – 55810 (4.4 kb)
52199 – 56423 (4.2 kb)
53820 – 55810 (1.9 kb)
54755 – 55810 (0.96 kb)

Furthermore, except for the 6.2 kb fragment, this is also depicted in FIG. 1, which is attached as Exhibit 1. Fragment 54755-55810 is in all the other fragments shown above and in FIG. 1, including in the 11.5 kb region that spans 49485-61006. This is also set forth in the paragraph bridging page 3-4. Neither prior art references teaches the entire region set forth in the constructs.

It is my understanding that a new search would not be needed because a search of the 11.5 kb region necessarily included a search of all the regions contained within it. All of the other regions—0.96 kb, 1.9 kb, 4.2 kb, 4.4 kb, 6.2 kb, 6.3 kb, and 7.6 kb—fall within the sequence set forth in the 11.5 kb region spanning 49485-61006. Accordingly, Applicant believes rejoinder is appropriate.

D. Claims Are Enabled

Based on the discussion during the interview, the Examiner indicated that he did not believe there was an enablement issue with the claims. Accordingly, Applicant respectfully requests that this rejection be withdrawn.

The Examiner is invited to contact the undersigned agent at (512) 536-3081 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

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Exhibit 1

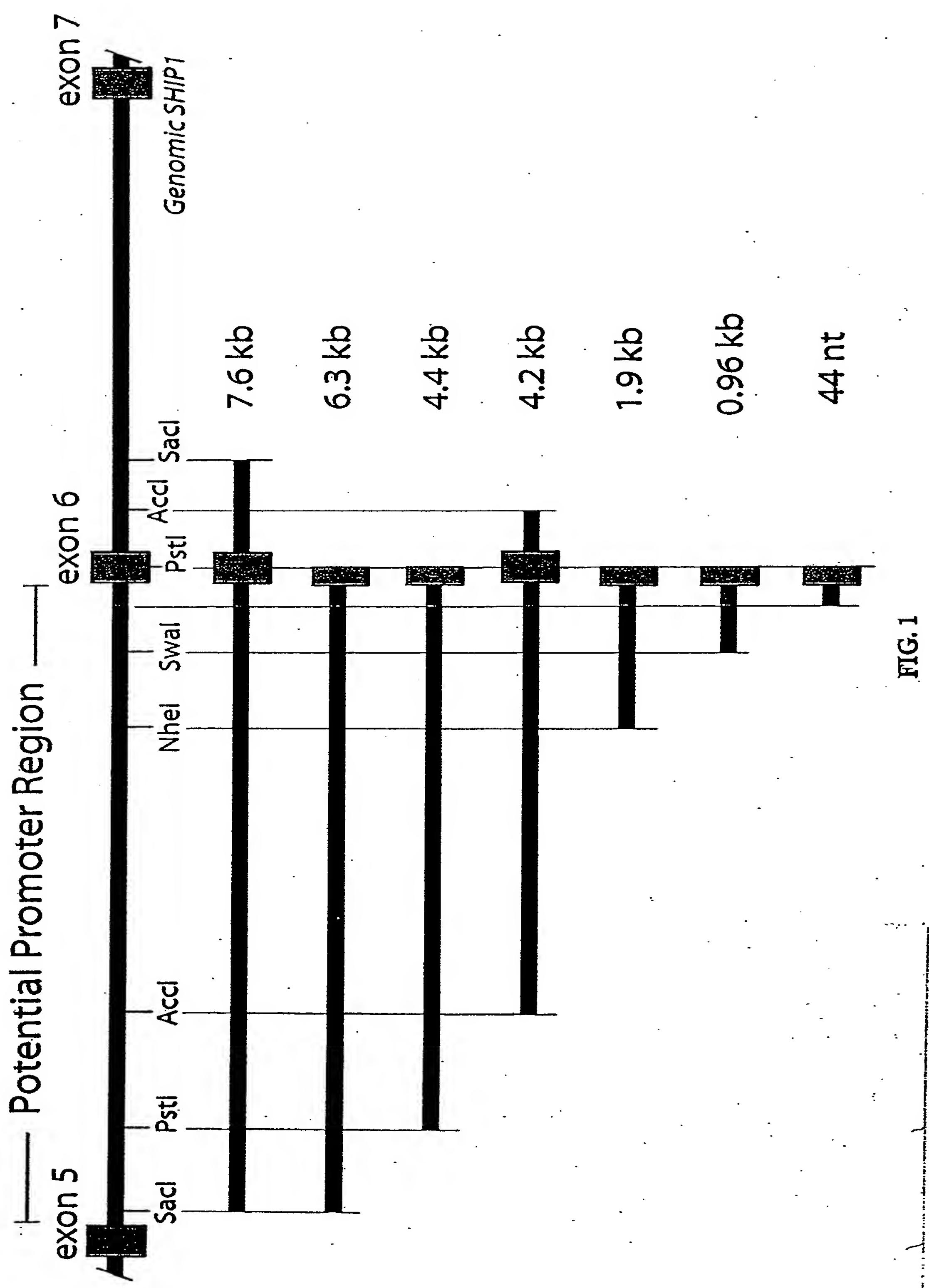


FIG. 1